



United States Department of the Interior



BUREAU OF LAND MANAGEMENT

Surprise Field Office
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In Reply Refer To:
4160 (CA-370) P

February 13, 2009

NOTICE OF THE FIELD MANAGERS FINAL GRAZING DECISION

GRAZING PERMIT ISSUANCE FOR THE BALLY MOUNTAIN ALLOTMENT (#01101)

INTRODUCTION

The Bally Mountain Allotment is located at T46N, R19E in Northern Washoe County, Nevada, as shown on the attached map. The allotment is permitted for 24 cattle from April 25 to December 30, using 198 public AUMs annually. The Bally Mountain Allotment consists of 1,475 acres of public land, and 5,330 acres of private lands. During the Land Use Planning process the allotment was categorized as “C” (custodial) since no resource issues or conflicts were identified. Allotments categorized as “C” have been non-intensively managed by the BLM. Currently there is a base property lease for a period of three years.

BACKGROUND

The Bally Mountain Allotment permit was issued under the Appropriations Act, and therefore requires renewal prior to 2009. Washington Office Instruction Memorandum No. 2003-071, requires all grazing permits to be fully processed by the end of FY 2009, using the information from the land health standards evaluations as needed to complete environmental impact analysis and documentation.

- A rangeland health assessment was prepared in August 2003.
- A scoping letter was sent to 66 interested publics on January 17, 2008. This notice was also posted on the Surprise Field Office website.
- On February 19, 2008, the Western Watersheds Project submitted scoping comments.

- On February 22, 2008, the Nevada Department of Wildlife submitted scoping comments.
- On August 20, 2008 after carefully considering the scoping comments reviewing the 2003 rangeland health assessment and available recent monitoring data, the BLM issued CX CA-370-08-12, and a Notice of Field Manager’s Proposed Decision to the permittee and all interested publics regarding The Bally Mountain Allotment grazing permit renewal.
- On September 4, 2008 Western Watershed Project filed a protest of the proposed decision.

I have carefully considered each protest point and include the agencies’ responses in Attachment 1.

FINAL DECISION

Based on the information provided, and the facts and circumstances of this case, and in accordance with 43 CFR Part 4100, my final decision is as follows:

1. Issue a grazing permit to Schadler Ranches Inc. for a period of time not to exceed the term of the base property lease and provide for subsequent reissuance of a permit as the lease is renewed for a total period of time not to exceed ten years.
2. Permitted use will be as follows:

Permitted Use Summary

Allotment	Active AUMs	Suspended AUMs	Total Permitted Use
Bally Mountain	198	0	198

Grazing Permit Schedule

Allotment	Case File Number	Livestock number	Kind	Season	% Public Land	Public AUMs
Bally Mountain	0403405	24	Cattle	4/25 - 12/30	100%	198

Implement the allotment specific terms and conditions: in accordance with 43 CFR 4130.3-1:

1. Grazing use offered or authorized by BLM is subject to all provisions of the grazing regulations (43 CFR Parts 4100) and other applicable law and regulation. Grazing use will be in accordance with the Rangeland Health Standards and Guidelines for California and Northwestern Nevada Final EIS approved by the Secretary of the Interior on July 13,

2000. Grazing use authorization may be modified in accordance with regulation to attain progress towards achieving rangeland health standards (subpart 4180.1 and 4180.2 Fundamentals of Rangeland Health and Standards and Guidelines for Grazing Administration).

2. Salt and/or mineral supplements will be placed no closer than ¼ mile from any public water source, aspen stand, or meadow.
3. Grazing flexibility can be requested by the livestock operators to run increased numbers for a shorter season. Any changes in grazing use cannot exceed Active AUMs, and must be approved in advance by a BLM authorized officer.
4. All range improvements must be maintained to standards prior to livestock turnout. All assigned fence maintenance must be completed annually, even if your permit is not activated. Failure to complete assigned fence maintenance may result in suspension of your grazing authorization.

AUTHORITY

The authority for this decision includes but is not limited to:

43 CFR 4120.2(4)(c): “The authorized officer shall provide opportunity for public participation in the planning and environmental analysis of proposed plans affecting the administration of grazing and shall give public notice concerning the availability of environmental documents prepared as a part of the development of such plans. The decision document following the environmental analysis shall be considered the proposed decision for the purposes of subpart 4160 of this part.”

43 CFR 4130.2(a): “Grazing permits and leases shall be issued to qualified applicants to authorize use on public land and other lands under the administration of the Bureau of Land Management that are designated as available for livestock grazing through land use plans. Permits and leases shall specify the type and levels of use authorized, including livestock grazing, and suspended use. These grazing permits and leases shall also specify terms and conditions pursuant to 4130.3, 4130.3-1, and 4130.3-2.

43 CFR 4130.2(b): “The authorized officer shall consult, cooperate, and coordinate with affected permittees or lessees, the State having lands or responsible for managing resources within the area, and the interested public prior to the issuance or renewal of grazing permits and leases.

43 CFR 4130.2(d): “The term of grazing permits or leases authorizing livestock grazing on the public lands and other lands under the administration of the Bureau of Land Management shall be 10 years.”

43 CFR 4130.3-1(a): “The authorized officer shall specify the kind and number of livestock, the period(s) of use, the allotment(s) to be used, and the amount of use, in animal unit months, for every grazing permit or lease. The authorized livestock grazing use shall not exceed the livestock grazing carrying capacity of the allotment.”

43 CFR 4130.3-1(b): “All permits and leases shall be made subject to cancellation, suspension, or modification for any violation of these regulations or any of the terms and conditions of the permit or lease.”

43 CFR 4130.3-1(c): “Permits and leases shall incorporate terms and conditions that ensure conformance with subpart 4180 of this part.”

43 CFR 4130.3-2: “The authorized officer may specify in grazing permits or leases other terms and conditions which will assist in achieving management objectives, provide for proper range management or assist in the orderly administration of the public rangelands.”

43 CFR 4130.3-2(f): “Provision for livestock grazing temporarily to be delayed, discontinued or modified to allow for the reproduction, establishment, or restoration of vigor of plants, provide for the improvement of riparian areas to achieve proper functioning condition or for the protection of other rangeland resources and values consistent with objectives and applicable land use plans, or to prevent compaction of wet soils, such as where delay of spring turnout is required because of weather conditions or lack of plant growth.

RIGHT OF APPEAL

If you wish to appeal this final grazing decision for the purpose of a hearing before an administrative law judge in accordance with the regulations contained in Title 43 CFR 4.21, 4.470 and subpart 4160.3(f). Your notice of appeal must be filed with the Surprise Field Office Manager within thirty (30) days of the receipt of this decision at the above BLM Office, 602 Cressler St., Cedarville, CA, 96104. The appeal should specify clearly and concisely why you think this decision is in error. All reasons for error not stated in the appeal shall be considered waived and may not be presented at the hearing. Any failure to meet the thirty (30) day appeal deadline will bar you from challenging this decision.

If you wish to petition for a stay of this decision during the time that your appeal is being reviewed, the petition for stay must be filed within thirty (30) days of receipt of this decision to the above BLM office. If you request a stay, you have the burden of proof to demonstrate why a stay should be granted.

Standards for Obtaining a Stay:

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied;
- (2) the likelihood of the appellant’s success in the merits;

- (3) the likelihood of immediate and irreparable harm if the stay is not granted, and
- (4) whether the public interest favors the granting the stay.

Sincerely,



Shane DeForest,
Surprise Field Manager

cc: Schadler Ranches, Inc. (7160 3901 9846 0556 0941)
Gene Gabrych (7160 3901 9846 0556 0958)
Todd Degarmo; Chair, Ft. Bidwell Tribal Council (7160 3901 9846 0556 0965)
Cherie Rhoades; Chair, Cedarville Rancheria (7160 3901 9846 0556 1030)
Jim Gifford; USDA, NRCS (7160 3901 9846 0556 0989)
Center for Biological Diversity, Grazing Reform Program (7160 3901 9846 0556 0996)
Michael Connor; Western Watersheds Project (7160 3901 9846 0556 1009)
Dennis Smith, Modoc Cattlemen's Association (7160 3901 9846 0556 1016)
Nevada Division of Wildlife (7160 3901 9846 0556 1023)
Nancy Huffman; Chair, Northeastern California RAC (First Class Mail)
Jesse Harris, Nevada Cattlemen's Association, North Washoe Unit (First Class Mail)
Modoc-Washoe Experimental Stewardship Committee (First Class Mail)
Norvie Enns; CA & NV Rockhounds (First Class Mail)
Nevada Clearinghouse – e-mail

Attachments

Attachment 1, Response to protest
Allotment map

Attachment 1.

RESPONSE TO PROTEST

In addition to the below responses, it seems that a clarification is required as to the definition of ‘custodial’ allotment.

In the Surprise Field Office Resource Management Plan and Record of Decision of April 2008, a custodial allotment is defined as:

“**Custodial** – Allotments usually consist of relatively small acreages or parcels of public land often intermingled with larger amounts of nonfederal lands. There should be no known resource conflicts involving use or resource conditions. Typically, opportunities for positive economic returns from public investments are limited on these lands.”

Point 1. ‘The proposed decision is based on a CX that fails to analyze the site-specific direct, indirect and cumulative impacts of livestock grazing on the Greater Sage-Grouse (*Centrocercus urophasianus*) and on sage grouse habitat. As we pointed out in our comments, Bally Mountain allotment lies within the Sage Grouse Vya Population Management Unit (PMU). There are known sage grouse leks about 3.5 miles northwest and about 3 miles southeast of the allotment boundary. The USFWS has initiated a status review for the sage grouse as it considers listing the species on the list of threatened and endangered species. We provided a summary of impacts to sage grouse and sage grouse habitat from livestock and livestock grazing operations in our scoping comments. These environmental impacts have not been addressed.’”

Response:

Washington Office Instruction Memo WO-IM-2008-019 dated October 25, 2007 established procedures for using a Categorical Exclusion for grazing permit renewal. This authority was granted on August 14, 2007 when a final rule was published in the Federal Register.

A Categorical Exclusion is a NEPA document, and is defined in the NEPA Handbook H-1790-1 as: “A category of actions that do not individually or cumulatively have a significant effect on the human environment and that have been found to have no such effect in procedures adopted

by a federal agency and for which, therefore, neither an environmental assessment (EA) nor an environmental impact statement (EIS) is required. “

The BLM is aware of the presence of sage grouse within the allotment, however as was indicated in the January 17, 2008 scoping letter, no sage grouse leks were known within the allotment. Although the sage-grouse has no federal listing status, it is a BLM sensitive species and was considered during the NEPA process.

The Categorical Exclusion documented the sage grouse resource and discussed impacts in the section entitled “Screening for Exceptional Circumstances” in the rationale section for exception number 2. This section states: “The 2005 Barrel Fire removed the best elk and sage-grouse habitat in the allotment, however sage-grouse very likely still use the unburned steep slopes within the Bally Mountain Allotment for nesting. Past radio collar work in the area displayed sage grouse nesting in the Bally Mountain Allotment, while the allotment was managed as proposed for renewal. With no change in management, sage grouse use is expected to continue as it has been.”

The BLM agrees that livestock may have negative indirect impacts to sage-grouse via changes in habitat. We considered the summary of impacts provided during scoping and we believe the final proposal for grazing use addresses these concerns.

Point 2. ‘The allotment lies well within the historic range of the pygmy rabbit (*Brachylagus idahoensis*) and close to known extent occurrences. The CX fails to even mention the pygmy rabbit and provides no data indicating that the allotment has ever been surveyed for this species. The USFWS issued a positive 90-day finding on a petition to list this species on January 8, 2008. We provided a summary of impacts to pygmy rabbit and pygmy rabbit habitat from livestock and livestock grazing operations in our scoping comments. These environmental impacts have not been addressed.’

Response:

Like Sage grouse above, Pygmy rabbits were considered and our records were screened to determine the presence of this species or its habitat within the allotment. This was disclosed on January 17, 2008 in the initial scoping letter. Based on a review of our records, which included the publication referenced by your comment, we determined that this species did not occur within the allotment.

The closest historic or active burrow in the 2006 Larrucea survey was approximately 8 miles east of the allotment boundary. Larrucea also surveyed two points along the western edge of the allotment and found no sign of pygmy rabbit. Two other sites less than 2 miles to the south and another site approximately 4.7 miles to the west were also surveyed and had no active or old sign of pygmy rabbit. According to the USFWS 90 day finding dated May 20, 2005, “Literature indicates that pygmy rabbits were never evenly distributed across their range. Rather, they are found in areas within their broader distribution where sagebrush cover is sufficiently tall and dense, and where soils are sufficiently deep and loose to allow burrowing (Bailey 1936; Green and Flinders 1980a; Weiss and Verts 1984; WDFW 1995)”. The 2006 Larrucea survey looked at 323 sites within the boundaries of the Surprise Field Office and 43 of these showed evidence of current activity. That survey found current and old sign concentrated in a definite pattern on the eastern side of the field office. Areas surveyed around Bally Mountain had no sign of current or old activity. Considering information in the 2005, 90 day finding by the USFWS of pygmy rabbit “moving up to 2.2 mi (3.5 km) (Green and Flinders 1979; Katzner and Parker 1998)”, incidental use would be minimal in the allotment.

While the USFWS did issue a positive 90 day finding for the pygmy rabbit on January 8, 2008, they are now in the process of a “12 month finding” in order to determine if a listing is warranted, warranted but precluded, or not warranted. If the listing is found to be warranted, then the species will be proposed for listing.

Point 3. ‘The CX fails to analyze the cumulative impacts of livestock grazing on fire intervals and recovery from fire on the allotment’s sage grouse and sage grouse habitat. Burns may essentially eliminate sagebrush habitat, increase weedy annual grass cover, reduce species richness, and could take a century or more for recovery to pre-burn sagebrush cover conditions. WWP staff observed impacts to habitat from the Barrel Fire on a recent field visit.’

Response:

After reviewing the Categorical Exclusion, we agree that cumulative impacts of fire were not specifically mentioned. However, as a part of completing the CX, and as evidenced in the section entitled “Screening for Extraordinary Circumstances”, cumulative impacts were considered. When the team reviews the conditions on the allotment, they not only look for and evaluate livestock related impacts, they also look for and determine the presence and causes of impacts not related to current livestock use. This investigation includes not only on-going impacts, but also impacts which have already taken place as well as other known activities which may produce incremental impacts when considered in relation to the proposed action. If impacts are detected, they are identified as the team completes the assessment. If they are contributing to the non-attainment of one or more of the standards, they are identified, and if the team concludes that these other impacts are not affecting the attainment of the standards, they are not carried forward.

There have not been any other large fires besides the 2005 Barrel fire. As your protest points out, the Categorical Exclusion disclosed that the Barrel fire burned in a portion of the allotment affecting "the best elk and sage grouse habitat on the allotment". However, given the limited nature of the fire's effect on the public lands on the allotment (5% affected) and the low percentage of the overall allotment area including private land (26% affected), the staff concluded properly that there were no “individually insignificant but cumulatively significant environmental effects”.

We acknowledge your statement that you visited the allotment and observed impacts, however you have not, to date, specified what those impacts are or where on the allotment you observed them.

Point 4. ‘The recently signed RMP established the North Hays Range Cultural Resource Management Area (CRMA). The west boundary of Bally Mountain allotment abuts and may in part overlap the North Hays Range CRMA. There is no mention of this in the documents. There is only a cursory review of impacts to cultural

resources. This is restricted to a statement that 2 cultural sites are known and these are not being impacted by grazing. The document does not disclose how much of the allotment has been surveyed for cultural resources, nor does it indicate the nature of the 2 sites or their relationship to the cultural resources of the North Hays Range CRMA.'

Response:

The North Hays Range Cultural Resource Management Area is not a formal BLM designation, but a designation assigned to the area by the Surprise Field Office. The Bally Mountain Allotment lies directly to the east of the CRMA but does not at any point overlap the CRMA therefore it was not mentioned in the document. For less than ¼ mile the border of the CRMA abuts the Bally Mountain Allotment. The two archaeological sites, both prehistoric, have been previously recorded on public land within the Bally Allotment. Both of the sites were visited during the 2007 Cultural Resource Assessment for the Bally Allotment. During the assessment it was determined that one of the two sites is not being affected by grazing. The second site had moderate trailing, slight erosion, and areas of wallowing under juniper. The second site was re-recorded and tested for its eligibility to the National Register of Historic Places. The site was found to be not eligible under any of the criteria set forth under 36 CFR 60.4.

Point 5. 'Capability and Carrying Capacity: BLM Grazing Regulation § 4130.3-1 requires authorized grazing use not to exceed an allotment's carrying capacity. The Field Office should conduct a site-specific Capability and Suitability study to determine if these lands are suitable for grazing use given their current ecological condition and to fully examine the effects of grazing on the relevant and important resource values of the allotment.'

Response:

The carrying capacity for the Bally Mountain Allotment was implemented by the 1981 (Livestock Grazing Management for the Cowhead-Massacre Planning Unit Final EIS). Since the Bally Mountain Allotment is meeting standards under current management, and those standards are tied to resource conditions there is no information to suggest that allotment is overstocked and to validate the carrying capacity in a specific analysis. The Bally Mountain Allotment is identified as suitable for grazing in the Proposed Surprise Field Office Resource Management Plan and final environmental impact statement issued in May 2007 as adopted by the Record of Decision approved in April 2008.

Point 6. 'Current invasive species inventories across the allotment and surrounding lands, analysis of the contribution of disturbance by livestock to localized increases in invasive plants such as cheatgrass, and potential ecological changes due to the Barrel Fire.'

Response:

The Categorical exclusion included consideration of the effects of the proposed action on noxious weeds and invasive species. The discussion for question 12 of the Screening questions for extraordinary circumstances specified that "This project would have a low probability to contribute to the introduction, continued existence, or spread of noxious

weeds or non-native invasive species known to occur in the area or actions that may promote the introduction, growth, or expansion of the range of such species.”

The Bally Mountain Allotment has been inventoried for noxious weeds for the past two years as part of the Barrel Fire noxious weed inventory and monitoring program. Four Bull thistle sites were located on private lands and were chemically treated in 2007. In 2008, the allotment was again inventoried for noxious weeds, and none were found.

Point 7. ‘The status of the sage grouse and pygmy rabbit populations on the allotment and surrounding area.’

Response:

See points 1 and 2 above.

Point 8. ‘Status of other wildlife.’

Response:

One of the reasons for conducting a rangeland health determination is to ascertain if healthy, productive, and diverse populations of native species exist and determine if authorized grazing use is not impacting the ability of the habitat to provide these values. The Standards for Rangeland Health for Northwestern Nevada and Northeastern California include biodiversity. This standard is specifically tailored toward the conditions and function of the natural systems on the public lands which would promote healthy and productive wildlife populations. The 2003 rangeland health assessment analyzed this standard and concluded it was being met. Field office resource staff reviewed this assessment and available monitoring data collected since 2003. They determined that the conclusions of the 2003 rangeland health assessment were still valid.

Point 9. ‘Full documentation of all natural or developed water sources.’

Response:

The scoping letter identified that there were no public springs within the allotment. All natural and developed water sources within the Bally Mountain Allotment are on private lands. One of these sources intermittently flows onto public lands. This undeveloped public land segment was visited in spring of 2008 prior to issuance of the proposed decision. The location of the source was verified to be on private land. The intermittent channel was not rated for Riparian Functional Assessment, but appeared functional.

Point 10. ‘Global climate change (mandated by Department of the Interior Order No. 3226).’

Response:

The categorical exclusion and exceptions screening questions used by the Surprise Field Office is consistent with current guidance as contained in Handbook 1790-1 National Environmental Policy Act.

Point 11. ‘Watershed impacts.’

Response:

The Standards for Rangeland Health for Northwestern Nevada and Northeastern California include standards for upland soils, stream health, riparian and wetland sites and biodiversity. These standards address all of the relevant components of a watershed. It was determined that all of these standards were being met based on the 2003 RHA and a review of available recent data. Watershed impacts were addressed

Point 12. ‘Use of junipers by wintering migratory birds and nesting raptors.’

Response:

Habitat condition and use by all species is considered in the rangeland health assessment process as the various standards are evaluated. The process of developing the categorical exclusion considers this evaluation and the determination which resulted. Staff concluded that the impacts of the proposed action and associated cumulative impacts would not have significant impacts on listed or proposed species or critical habitats. Further, the team concluded that there were no highly uncertain and potentially significant environmental effects or unique or unknown risks. A comprehensive inventory of birds which use juniper was not necessary to adequately determine effects. The Standards for rangeland health were met and there is no reason to conclude that achievement of these standards is impacting wintering migratory birds or nesting raptors.

Point 13. ‘The relationship between this allotment and other allotments it may be tied to. What are the cumulative impacts on sensitive species, the elk that use the allotment, and the sensitive cultural resources?’

Response:

The Bally Mountain Allotment has met all Rangeland Health Standards and ecological conditions are adequate to support natural processes. The assessment of cumulative impacts found there were no individually insignificant but cumulatively significant environmental effects (See response to point 3 above).

Point 14. ‘The RMP ROD states, “Implement the Greater Sage-Grouse Conservation Plan for Nevada and Eastern California, First Edition (2004), including the Vya and Massacre Conservation Strategies.” [RMP ROD at 15] The Conservation Plan states, “**The Washoe-Lassen-Modoc Local Group has worked with the appropriate BLM Field Offices and the livestock permittees to ensure that livestock grazing permits are being issued by comprehensive environmental assessments.** Livestock grazing permits are being issued by comprehensive environmental assessments. [Greater Sage-Grouse Conservation Plan for Nevada and Eastern California. 2004. at 72 our emphasis added] Yet, in the current decision, BLM is knowingly authorizing livestock in known sage-grouse nesting habitat during the nesting season without completing any site specific

“comprehensive environmental assessment”.’

Response:

The use of the term “comprehensive environmental assessment” in the Conservation Strategy does not mean that an EA is required for all projects dealing with sage grouse. It does not preclude the use of an EIS or a CX. Rather, it refers to the use of comprehensive and appropriate NEPA analysis which adequately analyzes environmental effects. The action proposed for the Bally Mountain Allotment was screened for exceptional circumstances and the selection of a CX is appropriate for the situation (see points 1,3,6,12,13 above).

Point 15. ‘The RMP states, “Changes at the activity plan level would be made in response to site specific monitoring” and “Maximum utilization would be reduced on a site-specific basis.

Areas needing reduced utilization would be fairly widespread, including the following... important wildlife areas (sage-grouse nesting and brood rearing)”. [RMP at 4-47 our emphasis added]

No site-specific monitoring of sage grouse appears to have been conducted. According to the CX, the allotment still provides nesting habitat for sage grouse despite the 2005 Barrel Fire. If this is so, then the unburned areas of the allotment are more important than ever to sage grouse conservation. A NEPA analysis is required to determine any reductions in utilization that are necessary to protect nesting sage grouse to conform to the RMP and to ensure no undue degradation of sage grouse habitat occurs pursuant to FLPMA for this grazing project.’

Response:

A rangeland health assessment was prepared in accordance with current policy. The standards for rangeland health were found to be met, therefore there is no need to adjust management on this allotment. A categorical exclusion is a form of NEPA analysis (see point 1 above). The use of a categorical exclusion to renew grazing permits in cases where the standard for rangeland health are met and no changes in permit terms and conditions are proposed is authorized. An interdisciplinary team of resource specialists considered the proposed action and conducted an analysis to determine whether or not a categorical exclusion was appropriate for this action by screening the action for exceptional circumstances and found there were none. The categorical exclusion template used is consistent with approved format as contained in handbook guidance.

The BLM together with the California Department of Fish and Game (CDFG), Nevada Department of Wildlife (NDOW) and volunteers have been surveying for sage-grouse leks in the vicinity of the Bally Mountain Allotment since 2000. This has resulted in the discovery of three leks within three miles of the allotment. The California Department of Fish and Game radio collared several birds from several leks on the field office in 2001. One female nested just within the Bally Mountain Allotment on a small parcel of public land and successfully produced several chicks. This site (mountain big sagebrush dominated) burned during the 2005 Barrel Fire leaving predominantly bitterbrush and sagebrush/juniper woodlands on unburned portions of public lands. NDOW has also collected some limited brood and harvest data from several points around the allotment since the late 1950’s. All of this data was looked at during NEPA development.

Point 16. ‘The RMP section on Potential Effects on Wildlife and Fisheries states, “Project-level implementation plans would incorporate guidance from management plans identified in this RMP (see Chapter 2) or to which BLM is signatory. Projects would incorporate expert opinion, literature review, and local field work, in order to develop sound strategies for implementation actions that would minimize adverse effects on wildlife and wildlife habitat.” and “Project-level effects would be suitably mitigated under NEPA standards for AMPs and other BLM Plans”. [RMP Section 4.22.1 Methodology and Assumptions at 4-148] Despite this, no site-specific monitoring of sage grouse and other wildlife appears to have been conducted and no NEPA analysis performed.’

Response:

Site specific monitoring has occurred for sage-grouse (see point 15). Based on this monitoring sage grouse use was quantified. The extent of sage grouse use has been discussed, having been introduced in the January 2008 scoping letter and further described in the categorical exclusion.

Point 17. ‘The RMP Analysis of the Preferred Alternative (section 4.22.4) states, “BLM projects must comply with the Endangered Species Act and NEPA. Efforts to minimize or avoid adverse effects on wildlife are implemented at the project level.” Implementing a grazing decision is a project implementation but BLM has not complied with NEPA as required.’

Response:

As cited at the beginning of this document, a categorical exclusion is a NEPA document (see response to points 1, 2, 3, 8, 12, and 15 above).

Point 18. ‘Have adverse effects on such unique geographic characteristics as historic or cultural resources, park, recreation or refuge lands, wilderness areas, wild or scenic rivers, sole or principal drinking water aquifers, prime farmlands, wetlands, floodplains or ecologically significant or critical areas, including those listed on the Department's National Register of Natural Landmarks. The western boundary of Bally Mountain allotment abuts and may overlap in part the North Hays Range Cultural Resource Management Area. There is no mention or analysis of this in the CX.’

Response:

Please refer to the answer for protest point 4.

Point 19. ‘Have highly controversial environmental effects. Grazing on public lands is itself a highly controversial issue. But in addition, there is legitimate scientific and managerial controversy over the myriad of impacts that livestock grazing may have on the specific project site. The CX provides no meaningful site specific, baseline monitoring data nor does it describe the site-specific environmental impacts of livestock on “cultural and historic, biological and botanical values, fish and wildlife resources, and scenic values.” The document does not even

mention the pygmy rabbit let alone review any impacts to this species. Nor does the CX provide any analysis of the direct or residual impacts of the 2006 Barrel Fire that postdated the 2003 Rangeland Health Assessment.

In this respect the following sentence from the CEQ NEPA Implementing Regulations is pertinent: “A significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial”. A relevant passage from the BLM NEPA Handbook H-1790-1 at IV-3 addresses the issue of public controversy and concern as follows:

“Alternatives to the proposed action must be considered and assessed whenever there are unresolved conflicts involving alternative uses of available resources. Public controversy or concern about a proposed action does not necessarily mean that alternatives must be analyzed. For example, concerns about land use may be addressed in an RMP/EIS in which several alternative uses of resources are analyzed. In subsequent activity planning, an EA tiered to the RMP/EIS may be prepared to examine site-specific impacts. Although there may continue to be public controversy and concern regarding alternative land uses, it is not necessary to reevaluate previously analyzed alternatives if the concerns were adequately addressed in the EIS prepared for the land use plan. If, however, **there is controversy or concern regarding site-specific resource uses which were not addressed in the RMP/EIS, it would be necessary to examine alternatives.** [BLM NEPA Handbook at IV-3 – our emphasis]. In this case, there has been no analysis of the impacts of the Barrel Fire on the allotment’s resources or land health status.

Because the site-specific impacts of the proposed action on the sage grouse and other resources are unknown and highly controversial, the CX does not pass Criterion 2.3. The proposed action analysis must default to either an EA or an EIS.’

Response:

The proposed action is in conformance with the Surprise Resource Management Plan (RMP). The RMP discussed the environmental effects of grazing and fire on vegetation.

The Barrel Fire did not occur outside the scope of the RMP analysis area, nor did it produce effects not anticipated. Post-fire management of the burned area was implemented in conformance with the parameters for post fire management used in the RMP to conduct the analysis.

The effects of fire on wildlife species were likewise analyzed in the RMP. And no unique or unanticipated impacts were observed. Furthermore, the effects of the Barrel Fire were considered by the interdisciplinary team when it screened the proposed action for exceptional circumstances. This interdisciplinary team concluded there were no unique or unknown risks or uncertain and potentially significant environmental effects.

As pointed out, the presence of controversy regarding alternative land uses does not necessitate additional analysis of alternatives if they have been previously analyzed. The Rangeland Health Assessment analyzed grazing effects on biodiversity. This standard was met.

Point 20. ‘Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks.

- The RMP seeks to implement the *Greater Sage-Grouse Conservation Plan for Nevada and Eastern California, 2004*. According to that document, “having reliable information to determine how many sage grouse are in a population and whether or not bird numbers are increasing, stable or declining is vital to making proper management decisions.” [Greater Sage-Grouse Conservation Plan for Nevada and Eastern California, 2004. Appendix M. Vya Population Management Unit Population Conservation Plan at 4] Because the survey data was inadequate, the report was “Unable to Determine Trend of Population”, and rated this a high risk. [ibid.] The report also concluded “Unable to Determine Effects of Conservation Plan” and rated this a high risk. This was in part because “In the Nevada portion of the Vya PMU very little baseline population data is currently available therefore it is recommended by the population subgroup that initial conservation actions focus on obtaining this baseline population data.” [ibid. at 5] Since the BLM reports no additional data on site-specific sage grouse numbers or habitat use on the allotment even though the proposed action may impact the sage grouse the Proposed Decision will have uncertain and potential significant environmental effects.

Because there has been no site-specific analysis the risks of the proposed action on the sage grouse are unknown and the CX does not pass Criterion 2.4. The proposed action analysis must default to either an EA or an EIS.’

Response:

See point 16 above. Since the plan was created, the BLM and state game agencies have been collecting additional information on sage-grouse populations within the Vya PMU. Information on sage-grouse has been collected in the general vicinity and within the allotment since the late 1950’s. This information was used to characterize sage grouse occurrence in the allotment and it was disclosed in the January 2008 scoping letter. Sage grouse populations are monitored by observing lek attendance. There are no leks in the Bally Mountain Allotment, therefore the reasonable conclusion was made that sage grouse use in the allotment is likely to be dispersed. Suitable habitat was identified as being present and this was disclosed in the categorical exclusion. The status of this habitat was documented. As was described in the response to protest point #19, there are no unique or unknown environmental risks or uncertain and potentially significant environmental effects on sage grouse within the Bally Mountain Allotment.

Point 21. ‘Be directly related to other actions with individually insignificant but cumulatively significant environmental effects.

- The CEQ NEPA implementing guidelines define a cumulative impact as “the impact on the environment that results from the incremental impact of an action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions.” [40 C.F.R. § 1508.7] Accordingly, in the typical NEPA process, the Cumulative Impacts section would review and analyze the cumulative impacts of grazing, drought, global climate change, off-road recreation, mining, and energy developments on all of the allotment’s natural resources. According to the RMP, The 2008 RMP identifies the site as being within an area considered to have medium and high wind energy

potential. [RMP Map EN - 1] According to the CX, the allotment was burned in part in the 2005 Barrel Fire. Both of these issues impact on sage grouse and its habitat.

Because there has been no site-specific cumulative impacts analysis, this CX does not pass Criterion 2.6 of the “extraordinary circumstances” test. The proposed action analysis must default to either an EA or an EIS.’

Response:

See response to point 3

The determination of whether or not an activity could have a cumulative impact does not simply hinge on the possibility of an action taking place. Rather the determination is based on whether or not there is a formal proposal for action, an approved permit or other authorization for the activity. With regard to your examples, there are no currently permitted wind energy development plans, nor have there been any approvals issued for exploration of wind energy potential. Similarly, for mining, there are no current notices of intent to conduct exploration or plans of operation neither within the allotment nor in the area surrounding the allotment.

Point 22. ‘Have adverse effects on species listed or proposed to be listed on the List of Endangered or Threatened Species, or have adverse effects on designated Critical Habitat for these species.

- As we pointed out in our comments, Bally Mountain allotment lies within the Sage Grouse Vya Population Management Unit (PMU). There are known sage grouse leks about 3.5 miles northwest and about 3 miles southeast of the allotment boundary. The allotment provides sage grouse nesting habitat. There is an extensive literature on grazing impacts to the sage grouse and its habitat, and we reviewed these impacts in our scoping comment letter.

- The allotment lies well within the historic range of the pygmy rabbit (*Brachylagus idahoensis*) and close to known extent occurrences. The CX fails to even mention the pygmy rabbit and provides no data indicating that the allotment has been surveyed. In 2006, Larrucea conducted an overall survey for pygmy rabbit in the resource area between May 16 and September 19. This survey consisted of traveling existing roads in while looking for appropriate habitat. Because of the latter constraint she produced only limited data on the distribution of the pygmy rabbit in the region. Her survey does not appear to have included any roads through the Bally Mountain allotment. BLM provides no data on surveys that have been conducted on the allotment itself although Dr. Larrucea recommended that future surveys and studies be undertaken. Dr. Larrucea did observe both old sign and active sign at 3 locations about 6 miles to the east, northeast and southeast. There is an extensive literature on grazing impacts to the pygmy rabbit and its habitat,⁵ and we reviewed these impacts in our scoping comment letter. Because the Proposed Decision may have adverse effects on species **proposed to be listed on the List of Endangered or Threatened Species**, it fails criterion 2.8. The proposed action analysis must default to either an EA or an EIS.’

Response:

Neither of these species is proposed for listing.

The USFWS (Service) did issue a positive 90 day finding for the pygmy rabbit on January 8, 2008, they are now in the process of a “12 month finding” in order to determine if a listing is warranted, warranted but precluded, or not warranted. If the listing is found to be warranted, then the species will be proposed for listing. See responses to point 2 above why the BLM does not believe pygmy rabbit occur in the allotment.

From the federal register, April 29, 2008, Page 23170-23172, Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition to List the Western Sage-Grouse (*Centrocercus urophasianus phaios*) as Threatened or Endangered.

“A 90-day finding is not a status assessment of the species and does not constitute a status review under the Act. Our final determination as to whether a petitioned action is warranted is not made until we have completed a thorough status review of the species, which is conducted following a 90-day finding. Because the Act's standards for 90-day and 12-month findings are different, as described above, a positive 90-day finding does not mean that the 12-month finding will also be positive.

The Service is already in the process of conducting a status review of the greater sage-grouse across the entire range of the species (73 FR 10218, February 26, 2008), and elsewhere in today's Federal Register we are publishing a notice that extends our request for information on that status review to June 27, 2008. In today's Federal Register we also are publishing a separate notice of a 90-day finding and initiation of a status review for the Mono Basin population of the greater sage-grouse. Consequently, at this time the Service has formally initiated three status reviews involving the greater sage-grouse, and the respective notices in today's Federal Register each request that information be submitted by June 27, 2008, for each status review. Information submitted for any one of these status reviews that is relevant to the others need not be submitted more than once. Because the status review of the greater sage-grouse that we initiated on February 26, 2008 (73 FR 10218) covers the entire range of the species, it encompasses the Mono Basin population of the greater sage-grouse and the western subspecies of the greater sage-grouse. It is our intention to address the taxonomy and status of the western sage-grouse, including relevant information received in response to this notice, within the rangewide status review of the greater sage-grouse. Further, because the three status reviews are somewhat interrelated, we anticipate that any interrelated aspects will be taken into account in our ultimate decisions.

If we determine that listing the western sage-grouse is warranted, we intend to propose critical habitat to the maximum extent prudent and determinable at the time we prepare a proposed listing rule.”

Point 23. ‘We protest that the Proposed Decision violates FLPMA. FLPMA requires that BLM “shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands.” [43 U.S.C. § 1732(b)] FLPMA requires the BLM to “minimize adverse impacts on the natural, environmental, scientific, cultural, and other resources and values

(including fish and wildlife habitat) of the public lands involved.” [43 U.S.C. §1732(d)(2)(a)] FLPMA states that public lands should be managed, “in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values...” [43 U.S.C. 1701 § 102] We protest the BLM’s failure to prevent undue degradation to these public lands by failing to provide meaningful management parameters for the allotment. Here, the BLM has not even provided the necessary analysis to meet the basic requirements of NEPA, and thus has failed to meet the requirements of FLPMA.’

Response:

The Bally Mountain Allotment is meeting the Rangeland Health Standards, and no unnecessary or undue degradation is occurring. All of the applicable Standards for Rangeland Health are being met. Information you provided BLM through comments or protest has not indicated any specific adverse effects to public lands on the Bally Mountain Allotment. NEPA has been completed by way of a Categorical Exclusion (see point 1).

Point 24. ‘We protest that the Proposed Decision and CX are based on a rangeland health assessment the fieldwork for which was conducted in August 2003. The Barrel Fire occurred in 2005 and “removed the best sage grouse and elk habitat on the allotment”. [CX at 4] Residual impacts to habitat from the Barrel Fire were observed on a recent (June 2008) field visit by WWP staff. The decision documents provide no information on the site-specific impacts of that fire on livestock grazing capacity or on wildlife habitat. They provide no information on any change in carrying capacity due to the fire, or of any temporary or permanent measures that were taken to avoid “undue degradation” to the recovery area from authorized livestock pursuant to FLPMA.

FLPMA also requires that the BLM prepare and maintain a current inventory of all public lands and their resources that reflects current conditions. [43 U.S.C. § 1711(a)]. We protest that this has not been done on Bally Mountain allotment. Without a clear understanding of the current status of these public lands BLM cannot make a rational decision about continued grazing in these allotments. BLM’s failure to maintain a current inventory of these resources violates both the spirit and letter of FLPMA.’

Response:

Grazing use on the Bally Mountain Allotment has been in conformance with the RMP. Proposed grazing use is based on a 2003 rangeland health assessment which concluded the applicable standards were being met. The Interdisciplinary team involved with reviewing the conditions on this allotment reviewed available data collected since the 2003 assessment and concluded that the conditions documented on the allotment then were still appropriate (see point 8). The Rangeland Health Assessment determined all standards were being met therefore no changes were warranted. A new carrying capacity analysis was not necessary (see point 5).

End of Attachment 1: Protest and Response

Bally Mountain Allotment

